United Nations A/HRC/29/40

General Assembly

Distr.: General
2 April 2015
English
Original: French

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of discrimination against women in law and in practice

Summary

In this report, the Working Group examines discrimination against women and girls in cultural and family life. The cultural construction of gender determines the role of women and girls within the family, including in marriage. After analysing the impact of culture and religion on the enjoyment of equal rights by women and girls in society and the family, the Working Group redefines family by incorporating a gender perspective. In reaffirming equality between the sexes and family diversity, it is necessary to apply the principle of women's right to equality in all forms of family law, in secular family law systems, State-enforced religious family law systems and plural systems. After recalling the obligation of States to combat discrimination against women in cultural and family life, the Working Group makes several recommendations, drawing on good practices, for the establishment of true equality between the sexes in cultural and family life.

GE.15-07003 (E) 060515 080615

1507003

Please recycle

Contents

		Paragraphs	*Page*
I.	Introduction	1–2	3
II.	Activities	3–7	3
	A. Sessions	3	3
	B. Country visits	4	3
	C. Communications and press releases	5	3
	D. Commission on the Status of Women	6	4
	E. Other activities	7	4
III.	Thematic analysis: eliminating discrimination against women in cultural and family life, with a focus on the family as a cultural space	8–70	4
	A. The cultural construction of gender	10–22	4
	B. The family: conceptual and sociological aspects	23–36	8
	C. Legal sources of family law	37–61	11
	D. The role of the State in ensuring respect for women and girls' right to equality in cultural and family life	62–70	15
IV.	Conclusions and recommendations	71–74	17

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 15/23 and 26/5. In chapter II, the Working Group summarizes its activities from the submission of its last report to the Human Rights Council (A/HRC/26/39) until March 2015. In chapter III, it addresses discrimination against women in cultural and family life.

2. The roles of Chairperson-Rapporteur and Vice-Chairperson of the Working Group were carried out by Frances Raday and Emna Aouij, respectively, until January 2015, and then by Emna Aouij and Eleonora Zielinska, respectively.

II. Activities

A. Sessions

3. The Working Group held three sessions during the period under review. At its tenth session, held from 5 to 9 May 2014 in Geneva, it discussed various issues relating to women in cultural and family life with a number of stakeholders, relevant parts of the United Nations Secretariat and other experts. At its eleventh session, held from 10 to 16 October 2014 in Geneva, the Working Group continued its consultations with several stakeholders, including the International Labour Organization and departments of the Office of the United Nations High Commissioner for Human Rights. By way of follow-up to the first meeting it organized in 2013, the Working Group held a seminar on the priority theme of cultural and family life, bringing together several representatives of the regional human rights mechanisms of America, Europe and Africa. At its twelfth session, held from 19 to 23 January 2015 in New York, the Working Group continued its cooperation with its partners, including the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), and with several Member States regarding the establishment of a legal framework for the implementation of the post-2015 development agenda and Beijing + 20. The Working Group consulted experts, academics and NGOs on the next priority theme it will address, namely discrimination against women in the areas of health and safety. It consolidated the information it had gathered to inform the present report.

B. Country visits

4. The Working Group visited Chile from 1 to 9 September 2014 (A/HRC/29/40/Add.1), Peru from 10 to 19 September 2014 (A/HRC/29/40/Add.2) and Spain from 9 to 19 December 2014 (A/HRC/29/40/Add.3). It wishes to thank the Governments of these countries for their cooperation before and during the visits and thanks Senegal, Hungary, the United States of America and Maldives for responding positively to its requests to visit.

C. Communications and press releases

5. During the period under review, the Working Group addressed communications to Governments, individually or jointly with other special procedures mandate holders of the Human Rights Council. Those communications concerned a wide range of subjects falling within its mandate, including discriminatory legislation on nationality, and the legal minimum age for marriage, allegations of forced and/or early marriage, and sexual and reproductive health (A/HRC/27/72, A/HRC/28/85 and A/HRC/29/50). The Working Group

also issued press releases, individually or jointly with other mandate holders, treaty bodies and regional mechanisms.

D. Commission on the Status of Women

6. Alda Facio acted as moderator of a discussion on the realization of the rights of marginalized and disadvantaged women and girls, on 18 March 2015, and participated in other events at the fifty-ninth session of the Commission on the Status of Women.

E. Other activities

7. On 1 September 2014, Frances Raday, the Chairperson of the Working Group, wrote to the President of the Human Rights Council regarding the lack of a reference to gender equality within the family in Human Rights Council resolution 26/11 on the protection of the family. On 3 October 2014, she presented a draft statement on the issue, which was adopted by the Coordination Committee of Special Procedures. On 2 December 2014, she participated in a discussion on national action plans on business and human rights at the United Nations Forum on Business and Human Rights. On 2 and 3 December 2014, Emna Aouij and Kamala Chandrakirana participated in a meeting of experts organized by the Due Diligence Project on the role of the State and the due diligence principle in relation to discrimination against women in cultural and family life. During the period under review, members of the Working Group participated in different activities relating to the Working Group's mandate in their respective regions.

III. Thematic analysis: eliminating discrimination against women in cultural and family life, with a focus on the family as a cultural space

8. The legal rights of women and girls to equality and non-discrimination in cultural and family life, established in 1948 by the Universal Declaration of Human Rights and by international human rights law, are often restricted in national laws and in practice, including in cultural practice. The Working Group emphasizes that, in accordance with international human rights law, States have an obligation to adopt appropriate measures with a view to eliminating all forms of discrimination against women and girls in laws, cultural practices and the family, whether perpetrated by State agents or private actors.

9. In order to prepare this report, the Working Group used responses to a questionnaire received from 32 Member States, as well as studies and research by United Nations programmes and bodies, international human rights mechanisms and other stakeholders that were transmitted to it directly or have been carried out recently on the subject.[1] The Working Group also identified good practices in respect of equality in the family and in cultural life, as required by Human Rights Council resolution 15/23.

A. The cultural construction of gender

10. Culture is a broad concept encompassing all forms of conduct, organization and human behaviour within society,[2] including family, language, religion, philosophy, law,

[1] See www.ohchr.org/en/issues/women/wgwomen/pages/wgwomenindex.aspx.

[2] Committee on Economic, Social and Cultural Rights, general comment No. 21, para. 11.

government, art and sport.[3] Cultural diversity occurs when culture is expressed and develops in different contexts in society. Culture is not a static or unchanging concept, although some States tend to present it as such in order to justify inequality between men and women. This living, dynamic and evolving process[4] permeates all human activities and institutions, including legal systems, in all societies across the world.[5] Viewing culture and beliefs as immutable hinders the realization and development of all human rights, including those of women.

11. The Working Group has taken as its basis the legal framework established by the human rights community regarding the right of women to participate, on an equal footing with men, in creating, contesting and recreating their cultures and in all aspects of cultural life. The equal right of all persons to participate in, access and contribute to cultural life is guaranteed by international human rights law, particularly articles 5 and 13, subparagraph (c), of the Convention on the Elimination of All Forms of Discrimination against Women, article 27, paragraph 1, of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights.

12. The construction of gender is deeply embedded in culture. In its general recommendation No. 28, the Committee on the Elimination of Discrimination against Women indicates that "the term 'gender' refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community."[6]

13. The cultural construction of gender is conducive to generalized discrimination against women in all cultures. Discrimination against women and girls cannot, therefore, be considered an essentialist element, present in certain cultures and not in others. Since cultures are neither homogeneous nor unchanging, there are very significant differences between them concerning their stages of development and the extent to which the patriarchy, misogyny and practices that are harmful to women and girls exist within them.

14. Culture, when understood as a macro concept, also includes religion. Religion constitutes an institutionalized aspect of culture, with its own sources of authority that regulate social behaviour. It is often based on the concept of transcendental authority, and most religions have codified normative systems. Change must be wrought within the religious hierarchy of the community and must conform to the religious dogma of the written sources. As a consequence, religions are often a haven against social and cultural change. In all religions, there are movements that resist any change to the patriarchy and the status of women and girls in the family.[7] Conversely, non-gender-based discriminatory

---

[3] Culture is understood here as a macro concept of human behaviour. The issue of women's participation in cultural activities will not be analysed. The Working Group refers to the work of the Special Rapporteur in the field of cultural rights and fully supports the implementation of her recommendations (see A/67/287).

[4] Committee on Economic, Social and Cultural Rights, general comment No. 21, para. 11.

[5] A/67/287, para. 2.

[6] Committee on the Elimination of Discrimination against Women, general recommendation No. 28, para. 5.

[7] Frances Raday, "Culture, religion and gender", *International Journal of Constitutional Law*, vol. 1, No. 4, Oxford University Press and New York University School of Law, 2003, p. 668.

practices, including some previously defended in the name of culture and religion, such as slavery, have been delegitimized or abandoned as values and ethics have evolved.[8]

15. The Working Group notes the vital importance of article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, which requires States to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. This provision establishes a legal basis for the primacy of women's right to equality over discriminatory cultural patterns of conduct, including those stemming from religious edicts.

16. Culture and religion are often invoked to justify discrimination and violent practices against women and girls. Women have often been viewed as objects rather than as equal participants with men in the creation and manifestation of cultural principles. Indeed, when culture and religion are invoked to justify different forms of discrimination against women, women are seen not as victims or survivors of such discrimination, but as persons who "violate" cultural rules and norms.[9]

17. Several United Nations human rights experts, special procedures mandate holders,[10] treaty bodies[11] and the Secretary-General of the United Nations have established that neither cultural diversity nor freedom of religion may justify discrimination against women. Discriminatory, repressive and violent practices against women should be eliminated, whatever their origins, including those founded in culture or religion.[12] The Working Group is convinced that this opinion is crucial to securing women's enjoyment of their right to equality in all aspects of life.

18. The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have noted that harmful practices affecting women and girls are deeply rooted in social attitudes according to which women and girls are regarded as inferior to men and boys based on stereotyped roles.[13] They highlight the gender dimension to violence and indicate that sex- and gender-based attitudes and stereotypes, power imbalances, inequalities and discrimination perpetuate the widespread existence of practices that often involve violence or coercion. They maintain that the nature and prevalence of these practices vary according to region and culture. These practices cause serious harm to every aspect of the lives of the women and girls who fall victim to them and include incest, female genital mutilation, early and/or forced marriage, so-called "honour crimes", dowry-related violence, neglect of girls, extreme dietary restrictions, virginity tests, servitude, stoning, violent initiation rites, widowhood practices and female infanticide.[14] The obligations set out in the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child form the basis for the elaboration of a global strategy to eliminate harmful practices,[15] which should

[8] Due Diligence Project, "The Due Diligence Principle and the Role of the State: Discrimination against Women in Family and Cultural Life", January 2015, p. 6.

[9] Ibid., p. 5.

[10] See A/68/290, para. 30, A/67/287, para. 3, and A/HRC/26/22, para. 13.

[11] Human Rights Committee, general comment No. 28, para. 21; Committee on Economic, Social and Cultural Rights, general comment No. 21, paras. 18 and 64.

[12] Committee on Economic, Social and Cultural Rights, general comment No. 21, para. 19.

[13] Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, para. 6.

[14] Ibid., paras. 7 and 9.

[15] Ibid., para. 33.

be well defined, rights-based, have local relevance and comprise legal, economic and social support measures combined with proportional political engagement and State responsibility at all levels.

19. In many contexts, States fail to establish and enforce a clear legal hierarchy based on the guarantees of equality and non-discrimination set forth in international human rights law and national legislation, thus helping to maintain patriarchal modes of organization and behaviours.[16] Even when the law is independent of any religious source, it may be strongly influenced by culture, deriving from dominant ideologies linked to religion, traditional attitudes and social norms. Some States adopt national laws and regulations that restrict the rights, power and mobility of women on the basis of essentialist points of view belonging to a particular culture or religion. Conservative religious extremist movements impose strict modesty codes in order to subjugate women and girls in the name of religion, particularly in situations of political transition or conflict. For example, some branches of Islam have reintroduced forced and/or early marriage and some branches of Christianity prevent women from having access to therapeutic abortion. Religious extremism limits women's rights, including their right to health and economic activity, and they are generally subject to harsh sanctions for crimes committed against the patriarchy, such as adultery. At the international level, many States justify their reservations to articles of several human rights conventions, including the Convention on the Elimination of All Forms of Discrimination against Women, in the name of preserving their cultures and religions. Human Rights Council resolutions 16/3 on promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind and 26/11 on the protection of the family threaten to undermine international achievements in the field of human rights in the name of cultural and religious diversity.

20. The Working Group is concerned about the considerable increase in laws and public policies developed to protect culture and religion that threaten the universally established standards on the rights of women. Gender-based stereotypes, often strengthened and legitimized in national constitutions, laws and policies, are justified in the name of cultural norms or religious beliefs. Failure to eliminate these stereotypes leads to the generalization of practices that are harmful to women and girls. The sexist stereotypes present in the media, on the Internet, in audiovisual productions and in video games contribute to the perpetuation of a culture of discrimination and violence against women.

21. Women who do not conform to the gender stereotypes that predominate in some cultures and those who openly contest them, including within their own cultural or religious communities, are particularly vulnerable to discrimination, violence and criminalization. They include, among others, single women, widows, female heads of family, lesbians, bisexual and transgender women, sex workers and women human rights defenders. The Working Group emphasizes that the obligation of States to protect cultural diversity applies to diversity within cultures as well as between them.

22. While gender stereotypes pervade all aspects of human existence, women's rights are at particular risk in the family, which is a locus for the perpetuation of traditional values. The family is a product of patriarchal culture and a vital institution for upholding the patriarchy. The Working Group emphasizes that women's equal rights in the family are closely linked to their rights in all areas of life, including public and political life and social, economic and cultural life.

[16] See A/67/287, para. 3.

B. The family: conceptual and sociological aspects

1. Redefining the family by incorporating a gender perspective

23. The family exists in various forms. The expression "diverse families" encompasses, for example, single-parent families; families headed by women; intergenerational families including, among others, grandparents; families headed by children, such as orphans or street children; families comprising lesbian, gay, bisexual, transgender and intersex (LGBTI) persons; extended families; self-created and self-defined families; families without children; families of divorced persons; polygamous families; and non-traditional families resulting from interreligious, intercommunity or inter-caste marriages. Self-created and self-defined families include, in particular, families formed in marginalized communities. In all these different forms of family, women tend to be subject to legal sanctions and to experience difficult social and economic situations. Indigenous and minority women and women living in strict patriarchal, religious, traditional or caste systems are more likely to be found in these forms of family and are especially vulnerable to early and/or forced marriage, while men may have multiple households or second families with their de facto spouses or partners.

24. The different forms of family and their recognition by the State are influenced by a multitude of normative factors, such as culture, religion and caste, and behavioural factors, such as livelihoods, sexuality and social status. Although several international forums recognize family diversity, including "in different cultural, political and social systems",[17] many of the aforementioned non-traditional forms of family are not recognized by all States. The family is often defined by legal systems as a unit founded on marriage between a man and a woman, affecting rights relating to, for example, inheritance, property, child custody, pensions, tax relief and social service provision. Laws and public institutions in some States require a male family member or male guardian to initiate or conclude official transactions, thus placing families headed by women or consisting solely of women at a disadvantage. Families headed by women, like those headed by children, are more seriously affected by poverty because of the discrimination they suffer. Given that State recognition is often a condition for families to receive services and benefits, such as accommodation and protection provided by the State and/or non-State actors, lack of recognition leads to the marginalization of these families.

25. It is the opinion of the Working Group that the understanding and legal definition of the family in national legislation should be extended to recognize different forms of family. The recognition of same-sex couples, for both women and men, and other forms of family is an example of good practice that a number of States have already implemented. In this regard, the Inter-American Court of Human Rights has confirmed that mothers who are lesbians should not be deprived of custodial rights over their children.[18]

26. However, not all forms of marriage deserve recognition. The Working Group calls for the non-recognition of those forms that discriminate against women and/or fail to ensure equality and justice for women, whatever the legal system, religion, custom or tradition. This refers to, among others, early and/or forced marriage, temporary marriage and polygamy. The Committee on the Elimination of Discrimination against Women and the

---

[17] See *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (A/CONF.177/20/Rev.1), Beijing Platform for Action, para. 29; Panel on the protection of the family, 15 September 2014, twenty-seventh session of the Human Rights Council.

[18] Inter-American Court of Human Rights, *Atala Riffo and daughters v. Chile*, judgement of 24 February 2012 (Merits, Reparations and Costs).

Human Rights Committee[19] have recommended that States should prohibit polygamy on the grounds that it contravenes women's right to equality with men and can have serious emotional and financial consequences for women and their dependants.[20] However, there are national civil codes that legalize polygamous marriage, early and/or forced marriage and temporary marriage. The Working Group advocates the repeal of these codes. Among the countries that deem such marriages to discriminate against women and girls, some consider them void and others merely voidable. In all cases, the legal solution must protect the rights of women and girls, who remain the victims of these harmful marriages. Their rights to subsistence, to property, including land and inheritance, to a place of residence, to custody of children and to remarry must be guaranteed.

27. The Committee on the Elimination of Discrimination against Women has recommended the prohibition and annulment of these marriages, which violate the dignity of women, and calls for safeguards and guarantees to protect the rights of women and girls living in such families.[21] Invalidating an early marriage protects the minor spouses by restoring their single status so that they are deemed never to have been married, rather than divorced, and by cancelling all financial or property transactions linked to the marriage.[22]

2. Women's right to equality in the family

28. All legal definitions of the family should include the right to equality, de jure and de facto, of women and girls within the family. Full equality between women and men, and girls and boys, is a requirement of international human rights law and constitutes a right of women that is vital for the well-being of the family and for society as a whole.

29. International human rights law guarantees gender equality in the family, including when marriage is entered into, during marriage and at its dissolution, as set out in article 16 of the Universal Declaration of Human Rights and article 23 of the International Covenant on Civil and Political Rights. Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women establishes the obligation of States to ensure gender equality in all matters relating to marriage and family relations, including in respect of the decision whether to marry, the free choice of spouse, rights and responsibilities as parents, the decision on the number and spacing of children, and personal rights as husband and wife. Similarly, articles 1 to 3 of the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages require States to ensure gender equality regarding consent to marriage, to specify a legal minimum age for marriage and to register marriages.

30. When the rules governing family relations discriminate against women, they violate international human rights law. Furthermore, considerations linked to protecting and strengthening the family may not be invoked to justify forms of family that do not meet the requirement for equality between men and women and girls and boys. The lack of equality in these forms of marriage leads women and girls to experience discrimination, making them vulnerable to domestic violence.

---

[19] Human Rights Committee, general comment No. 28, para. 24.

[20] Committee on the Elimination of Discrimination against Women, general recommendation No. 21, para. 14.

[21] Committee on the Elimination of Discrimination against Women, general recommendation No. 21, paras. 14, 16 and 36–39.

[22] Marsha A. Freeman, Christine Chinkin, Beate Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary*, Article 16, 2012, p. 437.

31. The family is the basic unit of society and, as such, should be strengthened. It is entitled to receive comprehensive protection and support.[23] The family plays a key role in social development and in the growth and well-being of children, including girls. Women and girls' ability to act and participate in the different aspects of life in society derives mainly from respect for their right to equality with men and boys in the family. In this context, the Working Group deems it essential for families to be formed in such a way that women and girls' right to equality is fully recognized, respected, protected, fulfilled and promoted.

32. The Human Rights Council, however, in its resolution 26/11 on the protection of the family, did not reaffirm the right of women to equality in the family. In October 2014, the special procedures mandate holders issued a statement calling on the Council to ensure that the right to equality between women and men, and girls and boys, was included in all future resolutions concerning the family.[24]

33. Several States, in the name of culture or religion, have entered reservations to article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, which requires gender equality in marriage and the family. Withdrawal of reservations to article 16 of the Convention, and also to articles 2 and 5, represents good practice and a vital step towards the establishment of an effective legal framework to protect the rights of women in the family and in cultural life. Morocco and Tunisia have thus recently withdrawn reservations to the Convention, including to article 16. The Working Group shares the opinion of the Committee on the Elimination of Discrimination against Women to the effect that reservations to articles 2 and 16 are incompatible with the object and purpose of the Convention, and it reiterates the importance of States' withdrawing their reservations to these articles, and to article 5, so as to ensure gender equality in cultural and family life. It is the responsibility of States to respect their international commitments and the clear choices they have made regarding the primacy of international legal standards on gender equality over national secular, religious or customary legal standards.

3. Manifestations of discrimination against women in the family

34. The role of women in the family has generally been under patriarchal control in cultures and religions that subject women and girls to forced and/or early marriage and discrimination in a number of areas of family life, such as consent to enter into marriage, dowry obligations, the right to possess and manage property, sexual relations, requirements regarding modesty and freedom of movement, guardianship and custody of children, divorce and division of matrimonial assets, the punishment of adultery, the right to remarry following dissolution of the marriage or death of the husband, the status of widows and inheritance. In addition, women and girls are generally not treated equally in families with regard to the division of rights and responsibilities. Discrimination against women and girls in the family and in marriage affects all aspects of their lives.

35. In many cultures and religions, wives have a duty of obedience, and husbands have the right to punish their wives, including physically. The provision of sexual services by wives is deemed part of their duty to obey their husbands,[25] and marital rape is not prohibited.[26] The Working Group welcomes the introduction of laws criminalizing domestic violence in around 130 countries but finds it regrettable that only 52 countries explicitly

[23] *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (A/CONF.177/20/Rev.1), Beijing Platform for Action, para. 29.

[24] A/HRC/28/41, annex x.

[25] E/CN.4/2002/73/Add.2, para. 124.

[26] In some religions, such as Judaism, marital rape is forbidden.

criminalize marital rape.[27] Domestic violence has a considerable impact on women, causing more deaths than civil wars and entailing much higher economic costs than those linked to homicides or civil wars.[28]

36. In some countries, legislative provisions strengthen patriarchal family structures, as well as the concomitant discrimination and violence against women. This is particularly true of provisions allowing rapists to marry their victims in order to escape legal proceedings and laws that exclude marital rape from the prohibition of rape under criminal law. In some contexts, only men are able to transmit their nationality to their foreign spouses and their children. This de jure inequality has considerable effects on women and their children because the State protection granted by citizenship is refused them de facto.[29]

C. Legal sources of family law

37. Family law may derive from various legal sources in a State, such as constitutions, laws, judicial decisions, and religious and customary codes. However, States are required, under international human rights law, to respect, protect and realize women's right to equality in the family, regardless of the source of family law.

38. National constitutions are generally the supreme law in most States and form the foundation of the State's institutional and legal structures. They also provide the framework for the elimination of discrimination against women. An explicit constitutional guarantee of gender equality is fundamental to combating discrimination against women and girls in law and in practice. Many countries have already recognized and enshrined this principle of equality in their constitutional laws, and it is essential that it apply in all areas of law, including family law.[30]

39. Family law primarily addresses personal status and relations between family members.

40. In addition, secondary family law covers such areas as taxation, social security, retirement benefits, survivors' benefits and the right to family reunification.

41. The three main systems of family law are secular law systems, religious law systems and plural systems.

1. Secular family law systems

42. In most countries, family law is regulated by secular codes that have been established by the State, under civil or common law systems, and have no basis in religious or customary norms. Secular family law was originally patriarchal. The very being or legal existence of the woman was "suspended during the marriage, or at least [was] incorporated and consolidated into that of the husband".[31] Married women had no capacity to conclude contracts or own property and were discriminated against as regards inheritance, divorce,

---

[27] UN-Women, *2011–2012 Progress of the World's Women: In Pursuit of Justice*, 2011, pp. 32–34, available from: http://progress.unwomen.org/pdfs/EN_Report-Progress.pdf.

[28] Anke Hoeffler and James Fearon, "Conflict and Violence Assessment Paper", Copenhagen Consensus Center, 2014.

[29] See A/HRC/23/50, paras. 84–86.

[30] UN-Women, *2011–2012 Progress of the World's Women: In Pursuit of Justice*, p. 24.

[31] William Blackstone, *Commentaires sur les lois anglaises* (Commentaries on the Laws of England), 1765, vol. II, translated from the English by N.M. Chompré, Paris, Bossange, Rey et Gravier, et Aillaud, 1822, p. 215.

and guardianship and custody of children. Moreover, women had to pledge obedience to their husbands, and marital rape and corporal punishment were permitted.

43. Reforming family codes is essential to establishing, in national legislation, women's equal status in marriage and the family structure. Two types of process can be observed with regard to the promotion of gender equality in family law.

44. The first process is the elimination of discriminatory laws on the family and the promotion of gender equality within secular law systems. This sort of legal reform took place in some of these systems from the end of the nineteenth century, when many States reformed their laws on the family by separating religion from the State and introducing measures to promote women's equality within marriage and the family, including the right of married women to conclude contracts, own property, inherit, divorce, and have guardianship and custody of children, on an equal basis with men. Secular family law systems thus moved from being patriarchal to adopting a more egalitarian approach, which now represents good practice in ensuring gender equality in the family. A recent example is the Marriage Law in China, as amended in 2001, which nullified all bigamous marriages and all marriages in which one of the parties had not reached the legal minimum age for marriage, repealing traditionalist patriarchal laws on the family and affirming gender equality in the family.[32]

45. The second process is the transition from patriarchal religious family law to a secular family law system that provides for gender equality in the family. Several States where family law was based on patriarchal religious codes have introduced equality for women in the family by revoking religious laws and regulating family affairs under secular codes. In many European countries, family law was based on religious, primarily Christian, laws, and all marriages were thus placed under religious jurisdiction. At the end of the nineteenth century, all matters relating to family were placed under the secular jurisdiction of the State, thereby removing the religious hegemony in this area.

46. In some secular family law systems, elements of discrimination remain, for example a lower legal minimum age for marriage for girls and discriminatory provisions on inheritance rights, divorce and recognition of same-sex couples.

47. Moreover, some secular family law systems allow family matters to be decided in parallel religious or customary law systems, whether formal or informal. The implications for women's right to equality of such systems are discussed in the sections on plural legal systems.

2. State-enforced religious family law systems

48. Several States have no secular family code and regulate personal status either by integrating religious laws on the family into constitutional or legislative provisions or by granting religious authorities or religious tribunals jurisdiction over personal status so that they may apply the family codes derived from the sacred texts. Currently, a large number of States that have Islam as their State religion, such as the Islamic and Arab republics, regulate the personal status of all citizens by applying Islamic law from the Koran and the Sunna. Although the notion of the equality of men and women before the law is often incorporated in their constitutions, some States maintain that this equality does not apply in the case of laws on the family and on marital or personal status. Some States that recognize the legal competence of a majority religion in the State also grant non-majority religions jurisdiction over their own communities of faithful, such as Lebanon (Muslim majority), India (Hindu majority) and Israel (Jewish majority).

[32] See A/HRC/26/39/Add.2, para. 17.

49. Some States that apply religious or customary law to regulate personal status have reinforced the traditional prohibitions on adultery by criminalizing it. Adultery, which is defined as any sexual relation outside marriage, is severely punished and may even result in a sentence of death by stoning in some States that apply Islamic law. The sanctions are generally imposed on the women rather than the men. Interventions by foreign Governments, civil society and special procedures mandate holders have sometimes led to judgements that imposed stoning to be overturned. In some states in the United States of America, adultery between married persons is a crime, but these provisions have not been implemented in the last thirty years. The Working Group issued a statement calling for the decriminalization of adultery[33] and wishes to recall that criminalization of sexual relations between consenting adults is a violation of their right to privacy and an infringement of article 17 of the International Covenant on Civil and Political Rights.

50. Reforms to introduce a measure of equality for women in family law have come about in two different ways in countries where family law was based solely on religious law. The first involves reform based on religious interpretation (hermeneutics). The Committee on the Elimination of Discrimination against Women has argued, in several of its concluding observations, that evolving customs and the variety of possible interpretations of religious law offer potential for progress towards equality, while at the same time encouraging States parties to move in that direction.[34] Reforms of religious family codes, based on interpretations of sacred texts that favour equality, have taken place in some Muslim-majority countries, which have carried out legislative reforms founded on progressive interpretations of sharia. For example, Tunisia was one of the first countries with Islam as the State religion to enact a progressive Personal Status Code guaranteeing gender equality;[35] in 2004, Morocco embarked on a far-reaching reform of its family law, paving the way for significant progress towards gender equality;[36] Tunisia, Turkey[37] and Benin have adopted legislation against polygamy; in Indonesia, Islamic tribunals institutionalized the appointment of women judges in religious tribunals in 1989, thus encouraging more gender-sensitive rulings.

51. The second way to reform patriarchal religious family law involves the replacement of religious family law with secular law. In traditionally Christian States, such as Italy in 1970 and Greece in 1982, civil family codes were introduced to replace religious personal laws.

3. Plural legal systems

52. Plural legal systems are systems in which various laws coexist. They may include various combinations of codified civil law, religious law systems, indigenous or customary legal codes, community arbitration or other dispute settlement procedures. Plural legal systems may be formal or informal. They most often affect personal status law and family law. In States with plural legal systems, the State legal system, which is generally civil and codified, and the State courts address matters relating to the public sphere.

53. Several States have adopted this type of legal system as a way of acknowledging cultural diversity. However, legal pluralism is also used by some actors to promote political

---

[33] Statement by the Working Group, "Adultery as a criminal offence violates women's human rights", 2012, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&LangID=E.

[34] See Marsha A. Freeman, Christine Chinkin and Beate Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination against Women. A Commentary*, 2012, p. 439.

[35] See A/HRC/23/50/Add.2, paras. 7–8.

[36] See A/HRC/20/28/Add.1, paras. 18–22.

[37] Turkish Civil Code (1926).

and ideological interests. Approximately 80 per cent of claims or disputes are resolved by parallel justice systems, signifying that most women in developing countries access justice in a plural legal environment.[38] The existence of social, economic, institutional and cultural barriers and the lack of confidence in formal systems may explain the widespread use of these parallel systems. Poverty and a lack of information on accessing formal justice and education are the main factors that lead women to use parallel justice systems.

54. Parallel justice systems apply religious, customary or indigenous laws, which, as shown above, are patriarchal. These systems are mostly dominated by men and therefore tend to perpetuate inequalities and patriarchal interpretations of culture, resulting in discrimination against women. Regardless of whether the law is religious or customary, its provisions are often interpreted differently for men and women. The rulings and procedures of these legal mechanisms generally discriminate against women. Moreover, gender-based violence is seldom punished and is sometimes downplayed by religious or customary law courts.

Formal legal pluralism

55. Legal pluralism is formal when the State, through its constitution, laws or judicial decisions, has granted authority to a religious, indigenous or customary court, tribunal or arbitrator to exercise jurisdiction over personal status matters for women. Such systems are generally recognized in State legislation and some are regulated by the State, which may establish appeals procedures, ensure compliance with State legislation or even provide financial or material support.

56. Good practice in protecting women's right to equality in formal plural legal systems takes several forms. The adoption of constitutional laws that require autonomous courts, tribunals or arbitrators to respect women's right to equality in terms of both women's representation in justice systems and the formulation and application of procedural and substantive rules is a good practice implemented in several States. Since the 1980s, 11 Latin American States have formally recognized indigenous laws and courts in their constitutional laws, requiring the legal systems of indigenous communities to respect and enforce women's rights.[39]

57. The right to appeal, before the State courts, discriminatory decisions of indigenous courts, tribunals or arbitrators is another good practice. The commitment of indigenous women in some countries, such as Mexico and Ecuador,[40] to securing State recognition of parallel systems has enabled them to challenge, in the State system, the discrimination they suffered in indigenous legal systems. Women's participation as legal arbitrators, and also as lawmakers, is needed to draw attention to discrimination and to sensitive subjects such as rape or domestic violence, most victims of which are women.

58. Affirming the primacy of international human rights law and constitutional laws over religious, customary and indigenous laws is a key step towards ensuring women's emancipation and autonomy. Customary, religious and indigenous laws and provisions on family affairs must be consistent with the constitutional norms on equality. To ensure more effective application of the principle of equality, State monitoring and oversight bodies must be put in place, as has been done in Canada, Colombia and South Africa.[41]

[38] International Development Law Organization, *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment*, 2013, p. 12.

[39] Ibid., p. 68.

[40] Ibid., p. 77.

[41] Ibid., p. 25.

Informal legal pluralism

59. Jurisdiction is exercised informally when jurisdictional powers are not the result of an express grant of judicial authority by the State. Such jurisdiction is generally not recognized by the State. Such situations may arise when religious, indigenous or customary authority is exercised by judges, arbitrators or other alternative dispute settlement procedures that are not authorized or tolerated by the State and/or of which the State is unaware. These systems operate without oversight by the State, and, while some may have been recognized previously in law, often under former colonial systems, they are now beyond State control.

60. When the State becomes aware of such informal systems, it must put in place oversight mechanisms and procedures for appeals to the State justice system to quash decisions that discriminate against women. The State must make an effort to provide alternatives to these informal legal systems, for example, by rendering the formal State system more accessible.

61. Plural legal systems create complex and confusing legal situations. Various United Nations treaty bodies have sought to show how these systems limit women's enjoyment of the right to equality in their private and public lives, while acknowledging the richness of cultural diversity.[42] Even if there is no special recognition by the State of informal legal systems or formal delegation of functions by the State to traditional chiefs, the State should extend its protection, as referred to in article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.

D. The role of the State in ensuring respect for women and girls' right to equality in cultural and family life

62. The State has an obligation to respect women's right to equality within the family and should eliminate any laws, including customary or religious laws,[43] that discriminate against women and any discriminatory acts carried out by State authorities. The obligation not to discriminate against women is direct and absolute. A State will be in violation of this obligation if it has a law that discriminates against women, regardless of whether its family law system is secular, religious or plural.

63. The State has a direct obligation to protect and respect women's right to equality in all the forms of family law considered above. It is held responsible for any breach of its obligations, including in cases where it has, through its constitution, laws or judicial decisions, assigned jurisdiction over family law matters to a religious, indigenous or customary court, tribunal or authority. Moreover, the State has an obligation to exercise due diligence to guarantee and protect women's right to equality in informal plural legal systems.

64. The State must refrain from adopting laws, policies, measures or regulations that discriminate directly or indirectly against women and girls and must ensure that its officials, and private actors, respect this obligation in all contexts, including those situations where women are most vulnerable (as refugees, migrants or stateless persons, for example).

65. The obligation of the State to protect women and girls' right to equality in the family compels the authorities to prevent discrimination by private actors. Due diligence as a

[42] Committee on the Elimination of Discrimination against Women, general recommendations Nos. 21, para. 13, and 29, paras. 13–14.

[43] Committee on the Elimination of Discrimination against Women, general recommendation No. 21, para. 44.

principle of State action should result in a global model of prevention, protection, prosecution, punishment and redress for acts of discrimination and violence against women in cultural and family life.

66. To prevent any violation in cultural and family life, the State must challenge cultural discourse and cultural norms that discriminate against women and perpetuate structural discrimination, taboos or stereotypes based on gender. Attitudes and behaviours towards women must be changed, and women's access to employment, education and finance, as well as the safety of their homes and children, must be ensured by the State in order to reduce gender inequalities.

67. In terms of protection, the State must set up effective services that respond to women's needs in the short, medium and long term. Risks and factors that may lead to discrimination against women must be identified proactively so that effective interventions may be staged before violations are committed.

68. In the event of violations and discrimination against women, the State has an obligation to investigate and prosecute. The State must take measures to guarantee privacy, confidentiality and safety of victims, and to address women's needs and fears, while ensuring that they are not subject to stigmatization, social ostracism or reprisals. The State must be able to foster confidence in the police and the judicial process, including within plural legal systems. To this end, it must ensure that State bodies and courts systematically apply the principle of equality when interpreting and enforcing the law and that they do so in conformity with international standards. The Committee on the Elimination of Discrimination against Women has pointed out that, where this is not possible, the State is still liable and must take appropriate action.[44]

69. The State has an obligation to punish and to put an end to impunity and excuses or justification that perpetuate gender-based discrimination in cultural and family life. The State also has an obligation to afford redress for the harm suffered by women, including by providing for compensation, restitution, guarantees of non-repetition and even preventive measures.

70. Ensuring access to justice for women and girls who have suffered discrimination within the family or in cultural life is part of the State obligation to protect and respect their right to equality. This access must be guaranteed at the legislative and institutional levels. This means, for example, revising all additional laws that affect family and personal status matters, a process in which women must be involved. Also concerned are auxiliary regulations, including special measures adopted, where necessary, in such areas as taxation, social security, retirement benefits, survivors' benefits, rights relating to nationality and the right to family reunification, to ensure women and girls' de facto equality in the various types of family. Women must take part in the formulation and interpretation of national laws, including those relating to family affairs. At the institutional level, they must be involved, on an equal footing, in policy development and judicial bodies so as to ensure that the principle of equality is effectively applied and that decisions handed down demonstrate respect for gender equality. Improving access to justice for women also requires gender-equality training for State authorities and non-State officials responsible for law enforcement, social services and education and for medical and forensic personnel.

[44] Committee on the Elimination of Discrimination against Women, general recommendation No. 28, paras. 12–33.

IV. Conclusions and recommendations

71. **The cultural construction of gender makes women's subjection to gender-based discrimination and violence appear to be inherent and immutable. The patriarchal family is the product of this construction and the most important social mechanism for its perpetuation. Women and girls' human potential is restricted in families. The recognition that women's rights are human rights and that they are universal and indivisible has laid bare the adverse impact of this gender construction on women and girls in families and communities. The need for a paradigm shift has been clearly set out in international human rights law, which, since 1948, has established women's right to equality in all spheres of life, in culture and in the family. As Eleanor Roosevelt said as far back as 1958: "Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. [...] Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere."**[45]

72. **The State must act as an agent of change as regards women's place in cultural and family life, by fostering and creating a culture free of all forms of discrimination against women.**[46] **A transformative approach to women and girls' status in the family is crucial. There needs to be awareness that, in the past, a patriarchal concept of family pervaded all secular, religious, customary and indigenous laws and institutions and that some States and groups are now trying, in a retrograde manner, to subject women to the most oppressive forms of patriarchy, particularly in the context of religious fanaticism. It should also be understood that the transition towards equality between women and men, and girls and boys, in the culture and in the family is a prerequisite for a decent society.**

73. **The Working Group recommends that States:**

(a) Establish a national legal framework recognizing gender equality in cultural and family life, in accordance with regional and international standards:

(i) Recognize and enshrine, in their constitutions and laws, the right to equality, which should apply in all areas of life and have primacy over all religious, customary and indigenous laws, norms, codes and rules, with no possibility of exemption, waiver or circumvention;

(ii) Promote access to, participation in and contributions by women to all aspects of cultural life, including the definition, creation and interpretation of cultural and religious norms and practices, by providing equal resources, adopting special measures and policies, and facilitating women's access to decision-making positions and policymaking processes, at all levels;

(iii) Develop national strategies to eradicate cultural practices that discriminate against women and girls, as well as gender stereotypes, through awareness-raising campaigns, educational and informational programmes and stakeholder mobilization. Engage men, as appropriate, in prevention and protection efforts in respect of gender-based discrimination and violence;

---

[45] Eleanor Roosevelt, "In Our Hands" (speech delivered on 27 March 1958 on the tenth anniversary of the proclamation of the Universal Declaration of Human Rights) in *ABC: Teaching Human Rights – Practical activities for primary and secondary schools*, United Nations, New York and Geneva, 2004, p. 11.

[46] A/67/287, para. 5.

(iv) Develop effective mechanisms to combat the multiple and intersecting forms of discrimination suffered by all marginalized women, including minority women, women living in poverty, women with disabilities, refugee and displaced women, migrant and immigrant women, rural women, indigenous women, older women and single women;

(b) Promote a culture free of discrimination:

(i) Establish an executive body that applies the due diligence framework (prevention, protection, prosecution, punishment and redress), addressing all forms of discrimination against women in cultural and family life, including by non-State actors;

(ii) Reject any cultural or religious practice that violates human rights and the principle of equality or prevents the establishment of an egalitarian society free of gender-based discrimination;

(iii) Punish institutions, State officials and non-State actors whose actions threaten women's rights, even where the grounds for such actions are the preservation of culture and religion;

(c) Guarantee women's de jure and de facto right to equality in family diversity:

(i) Recognize and protect, in their constitutions and laws, all forms of family, and affirm and protect women and girls' right to equality in family diversity, by adopting and implementing appropriate measures to protect women from exploitation and discrimination in diverse families, particularly women living in vulnerable situations;

(ii) Eliminate in law and in practice all forms of marriage that restrict and/or deny women and girls' rights, well-being and dignity, including early and/or forced marriage, polygamous marriage and temporary marriage;

(iii) Establish appropriate solutions, remedies and redress to ensure respect for the rights and well-being of women and girls living in the forms of marriage referred to above, including the possibility for them to leave such marriages with their share of the matrimonial assets, custody of their children and the right to remarry;

(iv) Eliminate all laws or practices that restrict the rights and opportunities of widows or divorced women, but not widowers or divorced men, to remarry, work, have guardianship or custody of their children, and own the family home, assets and land;

(v) Repeal all laws that support the patriarchal oppression of women in families, such as laws that exclude marital rape from the crime of rape, laws that grant pardon to rapists who marry their victims and laws that criminalize adultery;

(vi) Prohibit and punish domestic violence, including incest and marital rape, and provide measures to protect women and girls who are victims of such violence, such as protection orders and shelters;

(vii) Respect, protect, fulfil and promote the right to gender equality in the family in the various types of legal system – secular family law systems, State-enforced religious family law systems and plural legal systems. The adoption of a family code or personal status laws free of any reference to culture or religion is encouraged;

(viii) In countries where several legal systems coexist, establish and implement national mechanisms to ensure the effective implementation of guarantees of equality and non-discrimination between men and women in all areas and at all levels, offering women, especially rural and indigenous women, the possibility of removing themselves from the arbitral authority and jurisdiction of customary institutions. Bring parallel customary, religious and indigenous law systems into line with international human rights law, particularly in respect of gender equality, while acknowledging the importance of the wealth and diversity of culture and traditions. Grant women the right to appeal, in State courts, decisions of religious, customary or indigenous authorities, whether formal or informal, that have violated their right to equality;

(ix) Make the formal State legal system accessible to all women, regardless of their social status, and address the shortcomings of the formal system. Formal justice should be preferred to informal justice for the settlement of all family matters, including those relating to sexual violence and domestic violence;

(x) Set up gender-awareness training for all State civil servants involved in education, health, social services, law enforcement and judicial decision-making. Include women, on an equal basis, in all bodies that interpret and apply family law;

(d) According to general recommendation No. 29 of the Committee on the Elimination of Discrimination against Women, the family is a social and legal construct and, in various countries, a religious construct. It also is an economic construct. The Working Group recommends that States:

(i) Take measures to ensure that families allow girls to access education on an equal basis with boys, by raising awareness in the community and providing families with financial incentives to allow girls to finish their studies;

(ii) Ensure that women are free to participate in economic activities outside the house or village, without the supervision of male relatives;

(iii) Ensure that women, on an equal footing with men, and girls, on an equal footing with boys, have the right to at least half the family property and inheritance in the event of divorce or widowhood. Facilitate the invalidation of any waiver of these rights obtained from a woman as a result of pressure from her family or community;

(iv) Recognize the right of women living in polygamous marriages to end their marriage when their husband takes another wife and grant them a share of the family property, including the value of the house or land;

(v) Recognize women as heads of family on an equal basis with men so that they may enjoy the same financial or social benefits;

(vi) Assess, quantify and take account of the impact of women and girls' status in the family in all poverty-reduction policies.

74. The Working Group recommends that international and regional human rights mechanisms:

(a) Develop standards, principles and guidelines to combat all forms of gender stereotype, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women;

(b) Conduct empirical studies on family diversity and the strategic implications of protecting human rights for the family and for all its members, on an equal basis;

(c) Explore the establishment of an essential framework of minimum legal protection for all types of family, including self-created or self-defined families, that would guarantee women's fundamental rights in the family, in accordance with international law.

United Nations A/HRC/29/40/Add.1

General Assembly

Distr.: General
20 May 2015
English
Original: Spanish

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of discrimination against women in law and in practice

Addendum

Mission to Chile* ** ***

Summary

The Working Group on the issue of discrimination against women in law and in practice conducted a visit to Chile from 1 to 9 September 2014. The present report describes the context surrounding gender equality and the human rights of women in Chile and analyses related achievements and challenges. It examines the legal, institutional and policy framework for promoting equality and the participation and empowerment of women in economic, social, political and public life, with particular attention to women in situations of vulnerability. The Working Group makes recommendations for eliminating discrimination and promoting equality.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and in English.

** The footnotes are reproduced in the language of submission only.

*** Late submission.

GE.15-07947 (E) 230615 260615

1507947

Please recycle

Annex

[English and Spanish only]

Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Chile (1–9 September 2014)

Contents

		Paragraphs	*Page*
I.	Introduction	1–6	3
	A. The visit	1–3	3
	B. Context	4–6	3
II.	Legal, institutional and policy framework for women's equality and human rights	7–36	4
	A. Legal framework	7–23	4
	B. Institutional framework	24–27	8
	C. Policies	28–32	8
	D. Access to justice	33–36	9
III.	Participation of women in the family and in cultural, economic, social, political and public life	37–57	11
	A. Participation of women in the family and in cultural life	37–42	11
	B. Participation in economic and social life	43–52	12
	C. Participation in political and public life	53–57	13
IV.	Right to health	58–62	14
V.	Women who face multiple forms of discrimination	63–77	16
	A. Indigenous women	63–66	16
	B. Domestic workers	67–68	17
	C. Lesbian women	69–70	17
	D. Women with disabilities	71–72	18
	E. Incarcerated women	73–74	18
	F. Women victims of violence	75–77	18
VI.	Good practices	78	19
VII.	Conclusions and recommendations	79–84	19
	A. Conclusions	79–80	19
	B. Recommendations	81–84	20

I. Introduction

A. The visit

1. The Working Group conducted an official visit to Chile from 1 to 9 September 2014 at the invitation of the Government. It met with stakeholders in Santiago de Chile, Valparaíso and Arica. The Working Group would like to thank the Government of Chile for helping to arrange meetings with the pertinent State agencies and for its excellent cooperation throughout the process.

2. In Santiago, the Working Group met with the President of the Republic, the President of the Senate, the President of the Supreme Court of Justice, the Minister responsible for gender matters, the Minister of Justice, the Director of the National Service for Women (SERNAM), the Undersecretary-General within the Office of the President, the Acting Minister of Foreign Affairs and representatives of the Ministry of the Interior and Public Security; the Ministry of Social Development; the Ministry of Education; the Ministry of Health; the Ministry of the Economy, Development and Tourism; the Ministry of Labour and Social Security; the National Service for Persons with Disabilities; the National Service for Older Persons; the National Indigenous Development Corporation (CONADI); the National Council for Children; and the National Service for Minors. In Valparaíso, the Working Group met with the Committee on Human Rights and Aboriginal Peoples and the Committee on Constitution, Law and Justice of the Chamber of Deputies, as well as the Senate Health Committee and the Senate Labour and Social Security Committee. In Arica, the Working Group met with the regional governor, the Director of SERNAM and the Regional Ministerial Health Department.

3. During the visit, the Working Group met with the National Human Rights Institute and with civil society representatives.[1] It also met with the United Nations Country Team and would like to express its particular gratitude for the support provided by the Regional Office of the United Nations High Commissioner for Human Rights.

B. Context

4. Since its return to democracy in 1990, Chile has seen strong economic growth. The poverty rate fell from 40 per cent in 1990 to 14 per cent in 2013. However, this significant economic development, as a result of which the World Bank classifies Chile as a high-income country, was not inclusive: inequality in income and wealth distribution continues to be one of the country's main challenges, hindering true social integration. At the same time, it has led to significant inequality in areas such as education and health, despite the increase in public spending in those spheres. Although Chile has a very high level of human development and is ranked 41 of 187 countries,[2] it also has the highest level of income inequality in the Organisation for Economic Co-operation and Development (OECD) area and the fourth-highest level of poverty in the region. One in five persons in Chile is poor and one in four reports not having enough money to buy sufficient food.[3] There are also territorial inequalities that create conflict between the central region and the other regions

[1] En Santiago, visitó la Casa de la Mujer "Laura Rodríguez" y se reunió con un grupo de mujeres recicladoras y trabajadoras domésticas. En la región de Valparaíso se reunió con un grupo de mujeres del Campamento Manuel Bustos. En Arica se reunió con el Grupo de Mujeres de la Construcción y la asociación de mujeres artesanas Asoayma.

[2] http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf

[3] http://www.oecd.org/chile/OECD-SocietyAtaGlance2014-Highlights-Chile.pdf

of Chile, and there is evidence of discrimination and rights violations against certain groups, particularly women,[4] indigenous peoples and migrants.

5. The national fertility rate is 1.89 children per woman. Life expectancy is higher for women (82.2 years) than for men (76.1 years). The maternal mortality rate is one of the lowest in Latin America, with 22.1 deaths per 100,000 live births.[5] Women are the heads of 39 per cent of Chilean households, of which 55 per cent live in extreme poverty.[6]

6. The Working Group visited the country at a time of change with regard to the rights of women. The current President, Michelle Bachelet, who was re-elected after her first term of office from 2006 to 2010, has publicly recognized that various forms of structural discrimination affect Chilean women in the areas of family, politics and work. She has also affirmed that if Chile is to achieve full economic, social and political development, all barriers limiting women's exercise and enjoyment of substantive equality must be removed.

II. Legal, institutional and political framework for women's equality and human rights

A. Legal framework

1. At the international and regional levels

7. Chile has participated positively in international human rights mechanisms, such as treaty bodies, the universal periodic review and the special procedures. It has ratified most international and regional human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, in 1989, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), in 1998. It has committed to the Beijing Declaration and Platform for Action of 1995 and the Millennium Development Goals. Chile voted against Human Rights Council resolution 26/11 on protection of the family,[7] which does not protect women's right to equality within the family and does not recognize family diversity. The Working Group welcomes the Government's intention to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

8. Chile has also ratified the International Labour Organization (ILO) Equal Remuneration Convention, 1951 (No. 100); Maternity Protection Convention (Revised), 1952 (No. 103); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Workers with Family Responsibilities Convention, 1981 (No. 156); Indigenous and Tribal Peoples Convention, 1989 (No. 169) and, recently, the Domestic Workers Convention, 2011 (No. 189), a move welcomed by the Working Group. Chile has yet to ratify the ILO Maternity Protection Convention, 2000 (No. 183) or the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).

[4] 68° lugar en el Índice de Desigualdad de Género.

[5] http://www.ine.cl/canales/menu/publicaciones/calendario_de_publicaciones/pdf/compendio_2014.pdf.

[6] Presentación del SERNAM al Grupo de Trabajo el 1 de septiembre de 2014.

[7] A/HRC/RES/26/11.

2. At the national level

9. Over the last 20 years, Chile has launched several legislative initiatives in order to further the realization of women's human rights and gender equality. The Constitution of Chile enshrines the principles of non-discrimination and equality between men and women.

10. Act No. 20609, adopted in 2012, established anti-discrimination measures, with a judicial mechanism that makes it possible to effectively restore the rule of law whenever an act of arbitrary discrimination is committed. It also contains a definition of arbitrary discrimination that makes express reference to discrimination on grounds of sex and gender identity. However, the Act does not contain a broad definition of direct and indirect discrimination against women or affirmative action and reparation for victims in line with articles 1 and 2 (a) of the Convention on the Elimination of All Forms of Discrimination against Women and with the principle of equality between women and men.

Women in the family

11. Chile has made progress towards the elimination of archaic provisions in the area of family law, such as differences between the rights of children born in and out of civil wedlock and the classification of adultery as a crime, which has now been abolished.[8]

12. In 2004, the new Civil Marriage Act No. 19947 established divorce on grounds of cessation of cohabitation (which requires a waiting period of one year when there is mutual agreement and of three years when the divorce is instituted by only one spouse) and divorce on grounds of fault (which does not require any waiting period). The Working Group notes with satisfaction that the Act protects the right to financial compensation in a divorce for the spouse who was responsible for childcare and domestic tasks rather than paid activity. Also among the recent changes to family law is Act No. 20680 of 2013, which incorporated the concept of shared parental responsibility into the Civil Code.[9]

13. Although the general legislative framework recognizes equal rights and responsibilities for men and women within the family, legal provisions that discriminate against women remain.

14. The Working Group noted with concern that the rules governing marital property under one of the joint property regimes discriminate against women. If spouses do not agree to another property regime, the general and supplementary regime under the Civil Code will apply to their property relations, and the husband will manage both joint property and the property belonging to the wife. In order to manage or access their property, wives must be represented or authorized by their husbands when participating in legal procedures, such as selling or letting property, or commercial procedures, such as arranging a loan. The Working Group welcomes the bill to reform the joint property regime, which makes women fully able to administer their own property and the assets acquired during the marriage.

15. The Working Group notes that the Civil Union Act, adopted on 28 January 2015 by Congress and currently under consideration by the Constitutional Court, recognizes the property rights of heterosexual and homosexual couples, but lacks filiation rights for the latter. As highlighted by the Committee on the Elimination of Discrimination against Women in its general recommendation No. 21, States must protect the equality of women

[8] Ley 19.335, 1994

[9] Situación de derechos humanos en Chile. Informe Anual 2014. INDH.

in de facto unions, in the sharing of income and assets and in the care and raising of children.[10]

Women in the workforce

16. The Constitution and the Labour Code also recognize and guarantee the principle of non-discrimination in the area of work. In 2009, Act No. 20348 introduced the concept of equal pay for men and women into the Labour Code. However, the Working Group was informed that citizens are generally unaware of the existence of this Act, which reduces its effectiveness. Workers' fear of losing their job if they mention the Act and their low levels of unionization, particularly among women, are also obstacles to its implementation. The Working Group also notes that the Equal Pay Act does not provide for equal pay for work of equal value, despite the State's obligation in that regard under the ILO Conventions and the Convention on the Elimination of All Forms of Discrimination against Women.

17. In 1998, Act No. 19591 banned employers from imposing pregnancy-related conditions in respect of female employees. In 2006, Act No. 20123 prohibited discrimination between male and female workers, regardless of whether they are permanent employees or subcontracted employees. This prohibition encompasses, inter alia, maternity benefits. In 2011, Act No. 20545 extended paid maternity leave to 24 weeks, with the option of transferring it to fathers, although women with salaries above the limit established by the Act are at a disadvantage. Additionally, Act No. 20761 of 2014 extends to fathers the option of exercising the right established in 2007 under Act No. 20166, which allows women to leave their place of work for one hour per day in order to feed their children aged under 2. The Working Group expresses its concern that many women are not part of the formal workforce and are therefore unable to benefit from paid maternity leave.

18. In the area of shared responsibility for caring for dependent persons of other ages, the process initiated in 1977 by Act No. 19505 is important. That Act established, for the first time, leave for working parents to care for children with special needs. In 2011, that leave was extended by Act No. 20535 to include care for persons over the age of 18 who have mental disabilities or are highly dependent, which marked the first time that a labour law had recognized care for dependent adults as a protected responsibility. Despite this progress, Chile is far from having embraced an egalitarian concept of family responsibilities, since the extensions of maternity and care leave apply to female workers as the main beneficiaries and are available to male workers only at the option of the mother.[11]

Women in political life

19. The Working Group welcomes the recent adoption by Congress of the reform replacing the binominal electoral system with an inclusive proportional system, with 60/40 gender quotas for nominations on lists of candidates.[12] The reform includes an affirmative action mechanism that requires parties to present gender-balanced lists; neither men nor women may represent less than 40 per cent or more than 60 per cent of any party's lists. Additionally, it includes economic incentives for the election of women, promoting their nomination for competitive positions, and establishes penalties for non-compliance.

---

[10] Mas especificamente, el Comité manifiesta su preocupación ante el hecho que los bienes acumulados durante las uniones de hecho no reciben la misma protección legal que los bienes adquiridos durante el matrimonio y por tanto cuando termina la relación la mujer tiende a recibir una parte considerablemente menor a la del hombre.

[11] INDH, Informe Anual 2014.

[12] En 1997 y 2003 fueron presentados al Congreso proyectos de ley para para promover la participación de las mujeres en la vida política, introduciendo cuotas de género en las elecciones locales y nacionales. Estos proyectos de ley no fueron adoptados.

Sexual and reproductive rights and health

20. Act No. 20418, adopted in 2010, established regulations on information, guidance and services in the area of fertility regulation, including the right to education, information, guidance and choice in areas relating to contraception and sex education. However, it grants schools and parents' associations the freedom to select and modify sex education programmes according to their beliefs and values. The Act requires the public sector to distribute contraceptives without discrimination, although the Working Group noted severe difficulties in accessing them (see para. 64).

21. The Working Group notes with extreme concern that abortion is criminalized in all circumstances under articles 342 and 345 of the Criminal Code. The right to therapeutic abortion existed in the country between 1931 and 1989, when the Health Code was amended by the military dictatorship. In January 2015, the Government submitted a bill to Congress that amended the definition and punishment of abortion as an offence. Consideration is being given to decriminalizing voluntary interruption of pregnancy in three circumstances: following rape, when the mother's life is in danger and when the foetus is not viable.[13] Chile is one of the few Latin American States that prohibits abortion for any reason and that has a clause in its Constitution explicitly protecting unborn children. In July 2014, the Human Rights Committee reiterated the international community's concern regarding the abortion law in Chile and recommended that the country establish exceptions to the general ban on abortion, including therapeutic abortion and cases where a pregnancy is the result of rape or incest. The Committee on the Elimination of Discrimination against Women made a similar recommendation.

Violence against women

22. The first law in Chile against domestic violence, adopted in 1995, initially emphasized the need to maintain the family unit through reconciliation therapy. This law was amended in 2005 by Act No. 20066, which improved protection measures and increased sentences. The Criminal Code was also amended in 2010, by Act No. 20480, to criminalize femicide committed by spouses, ex-spouses, partners or ex-partners, but femicide outside the family has not been addressed. Furthermore, there are gaps regarding the criminalization of sexual harassment, which is deemed a crime only when it occurs in the workplace (art. 2 of the Labour Code) or if it is committed against minors (Act No. 20526), but not in other settings or circumstances. The Working Group welcomes the Government's announcement regarding an amendment to the law on domestic violence aimed at making it more comprehensive, since the current legislation does not consider all forms of violence in all spheres, both public and private.

23. The Working Group recognizes that these laws have provided a legal basis for the protection of women's rights, but it also notes that many of them are incomplete and have not been implemented systematically or effectively. The Working Group furthermore notes that the existing laws have not been sufficiently disseminated so that Chilean women and men are fully aware of their existence and that there does not appear to be a significant number of legal proceedings so as to ensure that legal changes are in fact applied, such as in the case of the laws on equal pay, sexual harassment and violence against women.

[13] Desde 1991 se han presentado varias iniciativas legislativas para despenalizar el aborto en circunstancias extremas pero fueron todas archivadas o rechazadas.

B. Institutional framework

24. At the institutional level, since its creation in 1991, SERNAM has played a significant role as the primary State institution responsible for promoting and protecting women's rights and for achieving equality and has sought to ensure that a gender dimension is incorporated into all State policies.

25. One of the objectives of National Indigenous Development Corporation is to encourage the participation and comprehensive development of indigenous women, in coordination with SERNAM. The Corporation's Women and Gender Unit was created in March 2008 to promote, among other things, equal opportunities for representation and participation by indigenous women, with the aim of fostering their development, representation and participation.

26. With a view to strengthening the institutional framework for gender equality, the Government has recently created the Ministry for Women and Gender Equity,[14] which replaced SERNAM. The new Ministry's responsibilities will be to promote laws that ensure women's full enjoyment of rights and equal opportunities; to develop policies and programmes to prevent, eradicate and punish violence against women; to promote equality between women and men in family relationships and with respect to responsibility for the education, care and development of children and other family members requiring care; and to promote changes to bring an end to stereotypes, prejudice and practices that discriminate against women. However, the Working Group finds it regrettable that the term "*equidad*" (equity) was chosen rather than "*igualdad*" (equality) and that the law does not explicitly mention vulnerable groups of women. Under the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenants on Human Rights, the State is required to respect, protect and ensure women's right to equality and to prohibit gender-based discrimination against them. The promise of equity is insufficient to ensure the right to equality and to a life free from all forms of discrimination.

27. Despite increasingly scarce resources, Chilean civil society also plays an important role in the promotion and protection of women's rights, in some cases taking the lead or challenging the State when it does not fulfil its responsibilities.

C. Policies

28. The current Government is committed to intensifying its efforts to combat socioeconomic inequality in Chile. It has also recognized that gender inequality is the most pronounced form of inequality. Its political will is reflected in several draft reforms, including constitutional reform; reform of the binominal electoral system, with a gender quota for candidates of political parties; tax reform; measures to implement equal pay; and an end to for-profit education, thus providing access to quality education, strengthening public education and moving towards free, quality higher education. The tax reform adopted in September 2014 aims to bring about inclusive development, increasing public spending by 3 per cent and ensuring fiscal sustainability with the aim of, among other things, funding the increase in education spending.

29. The New Gender and Equity Agenda addresses women's rights, equality and autonomy, tackling issues such as:

[14] Ley 20820 del 20 de marzo de 2015.

(a) Violence against women, by increasing the number of women's shelters and centres, amending the Domestic Violence Act and drafting the National Action Plan on Violence against Women;

(b) The participation of women in politics, through electoral reform;

(c) Inequalities in women's participation in the world of work, by increasing their representation on the boards of public companies, establishing programmes to train and assist them in finding employment, increasing the number of nurseries and kindergartens and setting up a national care system for children, family members with disabilities and older adults;

(d) Sexual and reproductive rights, through the bills on sex education and the decriminalization of abortion;

(e) Quality of life, through preventive health care and leisure, culture and sports programmes;

(f) Cultural change, so as to put an end to practices and stereotypes based on gender.

30. The Working Group recognizes the efforts made to improve the social security system, for example through the creation of the non-contributory pension, which widened the individual capitalization system and introduced a system of non-contributory pensions for women and men over 65 who are unable to collect a pension on retirement. The solidarity insurance contribution supplements the social security funds of individuals who have less money in their fund than the minimum required to receive a pension. This is very important in the case of women who, because they have devoted themselves to their role as mothers, have been unable to pay contributions during certain periods of their life. However, the Working Group considers it regrettable that some of these non-contributory pensions amount to less than the minimum wage.[15]

31. The Working Group hopes that Chile will achieve the objective set under the National Health Strategy of reducing the projected fertility rate among those under 19 by 10 per cent before 2020 through a range of strategies such as adolescent-friendly spaces.

32. The Working Group finds it regrettable that the terms "equity" and "equality" are used interchangeably in government policies and programmes and urges the State to draw a distinction between the terms and to use the term "gender equality", as indicated above. It notes that the executive has repeatedly encountered difficulties in implementing policies, particularly with regard to bills aimed at promoting the equality of women in various settings. Many of the people consulted by the Working Group agreed that patriarchal social attitudes — reinforced through conservative religious values that are resistant to changes aimed at promoting women's rights — have had considerable impact on the formulation of policies and laws.

D. Access to justice

33. Despite efforts to modernize the administration of justice, including reforms to criminal and civil procedure and family justice,[16] the Working Group noted failings concerning women's access to justice. It observed that courts do not offer realistic remedies for women as regards equality. Obtaining effective reparation requires very costly legal representation, notwithstanding the existence of the Legal Aid Corporation, a non-profit

[15] http://www.fundacionsol.cl/wp-content/uploads/2014/08/Comision_Pensiones.pdf.

[16] Ley 19968 creando los tribunales de familia.

public service charged with providing legal guidance and advice, along with free legal representation for those without the financial resources to pay for it. The Working Group was also informed that legal aid is available only for persons with very low incomes and that demand for services frequently exceeds response capacity. The civil society organizations involved in legal aid lack the resources to litigate cases. The Working Group finds it regrettable that the National Human Rights Institute may only launch legal proceedings before the courts in cases of genocide, crimes against humanity, torture, enforced disappearance and human trafficking and is not permitted to submit amicus curiae briefs to the courts. Furthermore, the Working Group was informed that a large number of women who were victims of torture and sexual violence during the dictatorship have lacked the necessary resources to present evidence before the courts and have not obtained due reparation.

34. According to the information received, factors such as socioeconomic status, residence in rural areas, ethnicity, nationality and age strongly influence women's real possibilities of accessing effective legal remedies. The case of G.B.B., a female Aymaran herder who was detained in 2007, accused of neglect leading to the death of her 3-year-old son while she was working as a llama herder and sentenced to 12 years' imprisonment, was highlighted by the National Human Rights Institute as an example of how the legal system can exacerbate social exclusion and discrimination. The sentence, in addition to violating the right to due process and international standards on the rights of indigenous peoples, did not consider the cultural characteristics of female Aymaran herders and was based on a western legal perspective. In mid-2012, the then President of the Republic reduced the sentence from 12 to 6 years. The case[17] has been submitted to the Inter-American Commission on Human Rights on grounds of discriminatory treatment and a lack of due process resulting in an excessive and unfair sentence.

35. During its visit, the Working Group was informed of the excessive caseload of the courts, particularly the family courts, which delays the processing of cases and requests for precautionary protection measures against imminent acts of violence. The Working Group noted that in criminal law, only a small percentage of cases of violence against women go to trial, and an even smaller percentage result in the conviction of the attacker. These shortcomings create a climate of mistrust regarding the ability of the courts to provide effective legal remedies.

36. The Working Group was also informed that courts are not generally sensitive to gender. For that reason, as part of the Atala case,[18] the Inter-American Court of Human Rights called for training for judicial authorities on issues relating to gender-based discrimination. The Working Group finds it regrettable that the Supreme Court does not consider the decisions of the Inter-American Court of Human Rights or international human rights law to be legally binding. It also finds regrettable that the core curriculum of the Academy of the Judiciary does not include courses on women's rights or gender equality, and that the Ministry of Justice offers only limited and sporadic training on these matters. In order to ensure effective enjoyment of the right to access to justice, changes must be made to all aspects of the legal system.

[17] Declarado admisible, actualmente en curso.

[18] Ver párrafo 76.

III. Participation of women in the family and in cultural, economic, social, political and public life

A. Participation of women in the family and in cultural life

37. Discrimination against women in the family and in cultural life persists in Chile because of several factors, and in particular because of a national character that is dominated by patriarchal social attitudes, inequalities in the formal rights of women and men and a paucity of effective legal mechanisms to defend women's rights. The Chilean population's cultural representations of men and women have evolved positively in many regards; however, traditional concepts still carry significant weight among large segments of the population. In Chilean society, the idea persists that men are primarily responsible for providing economic resources through work and for exercising power, while women are responsible for domestic tasks, raising children and caring for others. According to one study, 62 per cent of Chileans would not agree with full equality between the sexes. Conservatism and machismo remain prevalent in Chilean society.[19]

38. These patriarchal attitudes in Chile also contribute to the perpetuation of domestic violence, as well as other forms of violence committed outside the home. Efforts should be made to dispel the myths surrounding the family, particularly the idea that it represents the safest and most secure space for women. The statistics demonstrate that, on the contrary, the family is a setting where they are continually exposed to the risk of gender-based violence (see para. 82 below).

39. The Working Group was informed that, as highlighted in 2009 by the Inter-American Commission on Human Rights (IACHR), failure to make alimony payments is common, despite the existence of a clear legal framework in that regard (Act No. 20152 of 2007), a situation that indirectly disadvantages women. Approximately 25,000 fathers are sued each year for failing to pay alimony, and 98 per cent of separated Chilean mothers must turn to the courts to receive alimony payments from their ex-partners, creating high levels of social injustice for children, and also indirectly for mothers, who must provide for their children alone.[20] The Working Group urges the adoption of the bill establishing an effective mechanism for the payment of alimony through court-ordered withholding of the funds by employers.

40. The Working Group was informed that many communications media convey and perpetuate gender stereotypes and often hinder genuine debate aiming to advance women's rights and gender equality. While some media are spearheading the creation of egalitarian identities that are tolerant of differences, others are reinforcing and generalizing the representation of women as erotic objects or as housewives and using them to promote consumption, perpetuating the most patriarchal representations of gender.

41. Studies indicate that the presence of women in the news varies according to subject matter, but, in general, women represent 29 per cent of the focus of news items, and men 71 per cent. However, it appears that the current President's first term of office marked a significant change in the media, making women more visible in the public sphere. Despite this new link between women and public leadership, some studies have revealed that the media sometimes trivialize the political activity of female ministers, accompanying

[19] Desarrollo Humano en Chile, Género: los desafíos de la igualdad, PNUD, 2010.

[20] http://www.cidh.org/countryrep/ChileMujer2009sp/Chilemujer09indice.sp.htm, Informe CIDH 2009.

information on their activities with comments on their private lives and on their physical appearance.[21]

42. The Working Group notes with concern the link between the inequality of women in the family and their limited participation in political and economic life, owing to stereotypical perceptions of their social role as women and also presumably as wives, mothers, daughters and carers, for example. Socially, women are expected to take primary responsibility for bringing up their children, thus limiting their opportunities for professional development.

B. Participation in economic and social life

43. There is a substantial level of inequality between men and women in the division of labour. In 2014, 48.3 per cent of women were participating in the workforce, as compared with 72 per cent for men. Despite the steady increase in recent years (from 31.7 per cent in 1990[22]), the Working Group is concerned at the low percentage of women in the labour market in comparison with the average for Latin America (52.8 per cent[23]) and in other countries of the OECD (63.8 per cent).[24] In addition, rates of unemployment for women remain higher than for men (6.5 per cent as compared with 5.1 per cent).[25]

44. The Working Group welcomes the efforts of the Government to promote the inclusion of women in the labour market by, among other measures, creating and encouraging the use of free nurseries and preschool services for the most socioeconomically vulnerable families. This important measure allows mothers, who usually bear the main burden of care, to participate in the labour market and generate an income. The Working Group encourages such initiatives and hopes that they will be expanded to include middle-class women.

45. The Working Group was disappointed to note the significant wage gap that exists between men and women who are carrying out the same work, which can be as much as 50 per cent in certain sectors[26] and is more accentuated in positions of greater responsibility. The Working Group also noted the high level of education attained by women, which is sometimes greater than that of men but does not usually translate into positions of greater responsibility and higher salary. In mid-2011, the Pensions Authority reported that the wage gap had increased by 17 per cent. A study by the Labour Directorate undertaken a year after the relevant legislation had been adopted revealed low levels of fulfilment of employers' legal obligations and scant promotion and training on the implementation of the law. As a consequence, the law is little known and the trade unions consulted did not know how to assert their rights.

46. The Working Group notes that there seems to be no specific and systematic implementation of the right to equal opportunities in employment. The Anti-Discrimination Act also regulates the prevention of discrimination at work. However, the equal pay guaranteed by the law has not led to the elimination of the wage gap. Moreover, the application of the law would appear to be insufficient owing to limited numbers of labour

[21] PNUD, 2010.
[22] INE (encuestas de trabajo)/SERNAM.
[23] Cepal, 2011.
[24] OCDE, 2011.
[25] http://www.ine.cl/canales/menu/publicaciones/calendario_de_publicaciones/pdf/compendio_2014.pdf.
[26] http://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=CHL.

inspectors and lack of effective remedies from the courts. According to one survey,[27] 74 per cent of Chilean society feels that defending their labour rights could cost them their jobs.

47. The limited participation of women in the workforce and their lower salaries lead to higher poverty rates among women in old age, despite the positive initiatives introduced by the Government (non-contributory pensions which were brought in as part of social security reforms in 2008).

48. Women hold only 5 per cent of high-level management positions in the principal Chilean companies.[28] According to information provided by the Government, the appointment of women to the boards of directors of public companies has increased by 24 per cent since 2014, and the goal is to reach 40 per cent by the end of the presidential mandate in 2018.

49. Despite reforms aimed at encouraging shared responsibility, continued cultural resistance in Chilean society in these areas means that the percentage of men willing to take on care-giving functions as provided under the reforms is minimal. Moreover, the legal provisions giving benefits to fathers who participate in the upbringing and care of their children generally apply only if the mother is absent.[29]

50. The Working Group found that the country has made significant progress in access to basic and secondary education, achieving similar coverage for both sexes. The enrolment of women in higher education has increased, but choices of career or profession seem to reflect assigned female gender roles. Greater efforts will have to be made in order to increase the percentage of Chileans of both sexes in higher education and to revise the educational curriculum in order to achieve gender equality. Seventy-two per cent of Chileans believe that a quality education is available only to those able to pay.[30]

51. The Working Group was able to witness the phenomenon of social and economic exclusion on its visits to Arica and the shanty towns of Viña del Mar. Despite efforts to ensure social protection, including targeted social benefits and welfare mechanisms, the system remains inadequate. This has a disproportionate impact on single mothers (who represent around 40 per cent of households), women who work in the informal sector and unemployed women.

52. The Working Group was deeply impressed by the resilience shown by women from significantly disadvantaged groups, who have formed associations in order to undertake activities in such areas as construction, recycling, handicrafts, marketing, education and training on matters concerning the empowerment of women. It noted that certain women's associations have been unable to obtain State financing or bank loans for their activities owing to restrictions concerning individual annual income or starting capital requirements. The Working Group was informed of innovative proposals to give women greater access to financing, and it is hoped that appropriate frameworks will be developed to support women's economic and social initiatives.

C. Participation in political and public life

53. The first election of a woman as President of the Republic in 2006 was a historic milestone in Chilean women's search for opportunities for participation and representation.

[27] Encuesta Nacional de Derechos Humanos 2013, INDH.
[28] Desarrollo Humano en Chile. Género: los desafíos de la igualdad, PNUD, 2010.
[29] CEDAW shadow report.
[30] Encuesta Nacional de Derechos Humanos, INDH, 2013.

More than half a century after women won the right to vote, Chile has made a leap forwards in terms of the presence of women in the highest echelons of power.

54. The Working Group was pleased to note the Government's efforts to increase the number of women in the executive. The cabinet is made up of 9 female ministers, 14 male ministers, 10 female undersecretaries and 22 male undersecretaries, meaning that 39 per cent of ministers and 31 per cent of undersecretaries are women. Moreover, around 20 per cent of intendants and 40 per cent of governors in Chile are women.[31] Representation is lower at the level of local government, where only 12.5 per cent of mayors are women. Among the largest hindrances to the participation of women are the political parties, which remain unwilling to embrace gender equality in political representation by introducing it into their internal culture, working practices and system of incentives.[32]

55. Notwithstanding efforts to increase the representation of women in the executive, they remain seriously underrepresented in other areas of power, particularly in the legislature. Although for the first time in the history of Chile the President of the Senate is a woman, the proportion of women in parliament stands at 15.8 per cent for the Chamber of Deputies and 18.4 per cent for the Senate, which is far below the regional average (24.5 per cent in 2014). According to the Inter-Parliamentary Union, Chile is number 94 on a list of 188 countries classified according to the proportion of women in parliament.[33]

56. The 60 per cent/40 per cent gender quota for candidates to parliament is a much-needed measure. Chile is one of two countries in Latin America not to have such a measure in place for elections to the legislature. The binominal electoral system has hindered women's chances of being chosen as candidates in such elections, as have the policies followed by the traditional parties and the lack of affirmative action plans at the national level to encourage the participation of women.

57. According to information obtained during the visit, the representation of women in the judiciary is higher than in other areas of power. However, women are concentrated in the lower courts. Fewer women are appointed to the courts of appeal. Of the 20 members of the Supreme Court, only five are women[34] (in 1995 there were no women on the Supreme Court, in 2005 there was one and in 2009 five).

IV. The right to health

58. The Working Group was pleased to note the efforts made to ensure basic health services, particularly preventive medical examinations.[35] In Chile, breast cancer and cervical cancer are covered under the System of Explicit Health Guarantees. Nonetheless, the Working Group was informed on a number of occasions that many women who lacked the resources necessary to obtain paid medical attention were unable to access free preventive examinations when they needed them. Various women in vulnerable circumstances complained that they had to wait for months before seeing a doctor for diagnosis or other health care and that sometimes they were unable to see a specialist for health problems requiring specialized care. These shortcomings in the health-care system were cited repeatedly as a major problem during the visit of the Working Group. Several of the people with whom the Working Group spoke highlighted the lack of specialists in the

[31] http://www.subdere.gov.cl/autoridades-nacionales.
[32] Desarrollo Humano en Chile, 2010, PNUD.
[33] http://www.ipu.org/wmn-e/classif.htm.
[34] http://www.pjud.cl/corte-suprema.
[35] Programa de Salud de la Mujer, Examen de Medicina Preventiva de la adulta.

public sector. According to one survey, 77 per cent of Chileans believe that obtaining quality health care depends on how much they are able to pay.[36]

Sexual and reproductive health rights

59. Although Act No. 20418[37] guarantees access to contraceptives of all kinds, the Working Group was informed that, in practice, difficulties exist regarding unequal access to contraceptives and non-availability of emergency contraception in many municipalities, with the staff members concerned claiming a lack of stocks or moral reluctance. Many women find themselves obliged to consult a doctor in order to obtain a prescription, and the additional costs can represent a major obstacle. According to the information provided by the Ministry of Health, the emergency contraceptive pill should be available at all health-care centres throughout the country to whomever asks for it, and it should be dispensed by midwives without consultation or prescription from a physician.[38] When the request is made by a girl under the age of 14, her parents or guardian should be informed subsequently. The Act has no implementing regulations, however, and the various government agencies use a considerable degree of discretion in applying its provisions as regards free distribution. The Working Group was alarmed by the high rates of teenage pregnancies and by the fact that the age of sexual consent is 14.[39] According to information from the Ministry of Health for 2012, 14.42 per cent of children were born to adolescent mothers.[40] During its interviews with groups of mothers, the Working Group was able to note that teenage pregnancies occur among girls belonging to the most socioeconomically vulnerable sectors of society, for whom being a mother is the most important, and perhaps the only, aspiration for their lives, identity and status, given the lack of opportunity to pursue their personal development in other areas.[41]

60. Sex education and access to contraceptives are key to addressing this situation. Under the law, everyone has the right to receive education, information and guidance on fertility planning. Educational establishments must include a sex education programme as part of the middle school curriculum, in a manner consistent with the beliefs of each establishment and in collaboration with parents. The Working Group finds it regrettable that sex education in schools is constrained by certain values and is not founded in the universal values of human rights, which would contribute to the eradication of discriminatory gender stereotypes and to the empowerment of women. As has already been indicated by United Nations special rapporteurs[42] and the human rights treaty bodies, religious freedom cannot be used to justify discrimination against women and, therefore, cannot be considered as a justifiable reason not to provide education on women's right to equality.

61. As the World Health Organization (WHO) has highlighted, teenage pregnancy is extremely dangerous for women. In Latin America, the danger of maternal death is four times greater among adolescents under the age of 16. Sixty-five per cent of women with obstetric fistula develop the condition during adolescence, with serious consequences for their lives, both physically and socially. Teenage pregnancies are also dangerous for babies, with mortality rates being 50 per cent higher among children born to adolescent mothers. Such pregnancies also have a negative impact on the socioeconomic development of

[36] Encuesta INDH 2013.
[37] Ver párrafo 20.
[38] Ver Ley 20533 del 2011.
[39] Articulo 362 del Código Penal.
[40] Minutas Ministerio Salud.
[41] Observatorio Equidad de Género.
[42] A/68/290.

communities.[43] In Chile, although the law[44] prohibits the expulsion of pregnant schoolgirls, pregnant teenagers drop out of secondary education, thereby seriously compromising their future opportunities.

62. As stated earlier (para. 21 above), the Working Group finds it regrettable that abortion is criminalized under all circumstances in Chile. According to the Ministry of Health, in 2011 there were 30,860 hospital discharges for abortion (spontaneous and/or induced). Other sources estimate the annual number of induced abortions to be between 70,000[45] and 109,200,[46] with serious risks for the health and life of women. According to one survey,[47] 87.4 per cent of Chileans would be in favour of amending the abortion law. As has been highlighted in a study,[48] the criminalization of abortion in all circumstances represents a violation of the human rights of women because it violates the obligation to guarantee and protect their autonomy, equality, personal security and integrity, life, their right not to suffer cruel, inhuman or degrading treatment, and their privacy and health.

V. Women who face multiple forms of discrimination

A. Indigenous women

63. The Working Group observed that Chile has few statistics that accurately reflect the realities of indigenous women because most of the data disaggregated by sex are not also disaggregated by ethnic origin and vice versa.

64. With regard to poverty, although indicators over the past two decades have shown a general improvement of socioeconomic conditions among the indigenous population, major gaps in levels of poverty and extreme poverty persist. Public policies have made it possible to carry out sectoral actions that have proved beneficial to aboriginal peoples, but they have not been sufficient to overcome the profound inequalities affecting the indigenous population.[49]

65. With regard to Mapuche women, one parameter that illustrates their increased vulnerability, resulting from the structural poverty in which they live, is the rise in the maternal mortality ratio (18.3 per 100,000 live births versus 37.4 in 2010) in the Araucanía region, which is home to half of the country's Mapuche population. This is an indicator of inequality in access to information and to timely, high-quality and culturally relevant health services, an inequality which is rooted in gender, ethnicity, social class and residence in rural areas.[50] According to the Economic Commission for Latin America and the Caribbean, mortality rates among Mapuche women are 30 per cent higher than the average.[51] With regard to gaps in education, although the State has no statistics on the subject, the Committee on the Elimination of Discrimination against Women has expressed concern about higher rates of illiteracy among Mapuche women.

---

[43] http://www.who.int/maternal_child_adolescent/topics/maternal/adolescent_pregnancy/en/.

[44] Ley 19.688 de 2000.

[45] Informe Anual de los Derechos Humanos en Chile, Universidad Diego Portales, 2013.

[46] Profile of abortion in Chile, with extremely restrictive law, Molina, Ramiro et al. 2013.

[47] Presentación SERNAM, 1.9.14.

[48] Informe Anual Derechos Humanos Universidad Diego Portales, 2013.

[49] Observatorio Equidad género, Violencia de Género en Chile, 2013.

[50] Ibid.

[51] Desigualdades territoriales y exclusión social del pueblo mapuche en Chile, CEPAL.

66. The Working Group expresses its particular concern about the high degree of social exclusion among indigenous women, who report feeling a sense of invisibility and of a complete inability to advance their human rights as individuals and members of their community. Several of those interviewed confirmed that there are insufficient programmes and policies geared towards the most vulnerable groups of women. For example, neither SERNAM nor the law establishing the new Ministry for Women and Gender Equality, make provision for a unit or programme focusing on and/or prioritizing the needs of indigenous women.

B. Domestic workers

67. In Chile it is estimated that there are about 326,000 domestic workers, of whom 96 per cent are women. Live-in female domestic workers account for around 16 per cent.[52] The Working Group was disappointed to find during its visit that the Labour Code establishes a differentiated statutory regime, with fewer labour rights and less protection, thus facilitating abuse and heightening the vulnerability of these female workers, who include a significant number of immigrants. For example, non-live-in workers can have contracts requiring them to work up to 72 hours a week (as opposed to 45 hours for other workers), and the law makes no provision for overtime, while for other workers overtime is paid at a rate 50 per cent higher than the regular rate of pay.[53] A number of the persons consulted agreed that current migration policies facilitate abuse.

68. The Working Group welcomes the recent adoption of Act No. 20786, which, among other advances, establishes a 45-hour working week for domestic workers.[54] Several other reforms have also sought to improve conditions for this category of workers: since 2011 they have received the minimum wage (until then they only had the right to 75 per cent) and are entitled to time off on holidays and to maternity leave. In practice, however, some of these modifications are not effectively applied, chiefly because of a lack of oversight. The Working Group also finds it regrettable that, under the new law, regulations governing working hours for live-in domestic workers are more lax.

C. Lesbian women

69. The Working Group also expresses its concern regarding allegations of violations of the rights of lesbian, bisexual and transgender women in Chile, who are victims of discrimination and violence in public and private life and for whom the State has not developed an appropriate response. Between 2002 and 2013, 1,128 cases or complaints of discrimination on the basis of sexual orientation or gender identity were recorded. Around 12 per cent of those cases involved lesbians and transgender persons. Although the number of cases has declined, the abuses have unfortunately become more violent than in the past and have led to deaths.[55]

70. During its visit, the Working Group expressed its concern about the case of Karen Atala, a lesbian judge who in 2002 lost custody of her daughters when the Supreme Court ruled that, because of her sexual orientation, she could not be a good mother and that custody should therefore be awarded to the father. In 2012, the Inter-American Court of

[52] Nueva Encuesta Nacional de Empleo, INE, marzo-mayo 2014.

[53] Informe Anual Derechos Humanos Universidad Diego Portales, 2014.

[54] Ley 20.786 que modifica la jornada, descanso y composición de la remuneración de los trabajadores de casa particular y prohíbe la exigencia de uniforme en lugares públicos.

[55] Informe movilh 2013.

Human Rights issued a contrary ruling, which stated that sexual orientation was not an impediment to being a mother or father and ordered the Chilean State to make economic redress to the affected party. The Working Group encourages Chile to implement the ruling, to accord recognition to families of all types and to support legal initiatives that would allow civil unions to be recognized.

D. Women with disabilities

71. Under legislation establishing norms on equality of opportunity and social inclusion for persons with disabilities[56] the State must adopt the measures necessary to ensure that women with physical or mental disabilities are able fully to enjoy and exercise their rights on an equal footing with others, especially as regards their dignity, right to form and be part of a family, sexuality and reproductive health.

72. Nevertheless, several of the people consulted stressed that the rights of persons with disabilities are still not fully respected, especially with regard to access to health, education, work and the full enjoyment of civil and political rights. The Working Group also expresses its concern at the lack of official statistics enabling the specific needs of persons with disabilities to be assessed.

E. Incarcerated women

73. During its visit, the Working Group visited the Arica Women's Penitentiary which has separate spaces for pre- and post-natal care and treatment, as well as facilities for breast-feeding infants. The Working Group found that a large proportion of the prisoners were female migrants convicted for drug trafficking offences. According to information received, a large proportion of these imprisoned women do not receive sufficient assistance from the consular services of their own countries or from the Chilean State to enable them to have adequate access to the Chilean justice system.

74. The Working Group, like the Special Rapporteur on violence against women,[57] encourages avoidance of intensive recourse to imprisonment for women, particularly pregnant women or women with young children, and suggests favouring the use of non-custodial methods and electronic monitoring. Since women are increasingly becoming the breadwinners of their households, their separation from their families has even more serious repercussions. The Working Group welcomes the bill aimed at commuting the sentences of a number of incarcerated women.

F. Women victims of violence

75. During the last 20 years a number of programmes and measures, both legislative and judicial, have been developed to address the problem of violence against women in the home. Despite this, however, violence against women in Chile has remained prevalent in recent years.[58] One in three women reports having been a victim of some kind of violence at the hands of a partner or ex-partner, although complaints are lodged in only about 30 per cent of cases.[59] Many of the persons interviewed also decried the leniency of the sentences imposed for such offences. The low numbers of complaints and widespread impunity

[56] Ley 20422 de 2010.
[57] A/68/340.
[58] Violencia de Género en Chile, 2013, Observatorio Equidad de Género en salud.
[59] Encuesta Nacional de Victimización del Ministerio del Interior, 2013.

hinder an effective response to this issue on the part of the State (see paras. 36 and 38 above).

76. Female human rights defenders (including Mapuche women) have reportedly been subjected to violence and sexual harassment by the Carabineros (police) during social protests, which is an additional cause for concern. A culture of impunity surrounds these offences owing to a failure to indict, transfer of jurisdiction to military tribunals and a lack of transparency. The Working Group echoes the concerns expressed by various persons consulted regarding the importance of keeping those cases in the civilian courts.

77. Violence against women is part of a cultural pattern with very deep roots in Chilean society. Its eradication will require prevention and attention by public services as well as the punishment of offenders. These elements, which should be part of a comprehensive policy to address the problem, are currently separate. The official response has focused on the judicial dimension, which has revealed itself to be insufficient to ensure the comprehensive protection that the State is required to provide. There needs to be a concerted and sustained response on the part of public institutions in developing prevention measures, which must include ongoing campaigns and a rights-based approach.

VI. Good practices

78. The Working Group was informed of the existence of the "Living Human Treasures" heritage programme, which has contributed to the recognition and protection of the role of women in aboriginal communities. Women are the repositories of memories of knowledge and events connected with domestic life, a function which is accorded scant recognition, value or prestige. The programme has helped to secure recognition for various cultural manifestations, including a woman representing the Mapuche culture who has been recognized for her work as an *epew* (storyteller) within the community and who speaks the Mapuche language and has a great capacity for transmitting knowledge; ceramics and the world view of the Aymara people; Aymara textiles; and a workshop on plant fibres of Rapa Nui. Various initiatives have been launched in collaboration with other public institutions to highlight the role of women in the country's traditional and artistic culture.

VII. Conclusions and recommendations

A. Conclusions

79. **Chile currently has a window of opportunity. It has the political will to eliminate discrimination and the economic potential to make a transformative change in the lives of women, moving from a patriarchal and conservative society to one in which women have equal political, economic and social rights and opportunities. The adoption of the programme of legislative reform proposed by the Government is an essential precondition for achieving such a change. Moreover, this change should be promoted not only through legislation, but also through the education system, the communications media and social networks.**

80. **Chile has made significant progress towards gender equality. Despite this, however, there is still a large gap between the principles of equality and the actual rights of women. There are hard cores of resistance to change in relations between the sexes in the country. Schools have enormous potential as forums for change and for fostering progress towards more equal gender relations. There does not seem to be consensus among all State and political actors regarding the changes that need to be made in gender relations. A cultural shift must take place through the adoption and**

implementation of effective legislation on equality in order to empower women and eliminate all forms of discrimination.

B. Recommendations

81. In a spirit of cooperation and collaboration, the Working Group makes the following recommendations to the Government of Chile in order to bolster initiatives aimed at ensuring gender equality and the protection and promotion of the human rights of women.

82. With regard to legislation, the Working Group recommends that Chile:

(a) Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

(b) Adopt a comprehensive legal definition of all forms of discrimination against women, covering both direct and indirect discrimination, to ensure that formal and substantive equality between women and men can be achieved;

(c) Ensure that constitutional reforms clearly establish the primacy of international human rights law in the legal system;

(d) Adopt the bill regarding the marital community property regime in order to ensure that the system is truly respectful of equality between spouses;

(e) Regulate the existence, celebration, validity and effects of de facto unions, ensuring entitlement to the same rights as those applicable to marriage;

(f) Adopt a specific law to guarantee equal opportunity of employment, with access to justice for workers who are victims of discrimination in the public or private sector;

(g) Amend the law on equality of pay with the aim of: (i) eliminating the requirement that a prior complaint be submitted to the employer as a condition for lodging a complaint before the labour court in a case of wage discrimination; (ii) including the principle of equal pay for work of equal value;

(h) Guarantee equality of rights for domestic workers, avoiding a graduated approach;

(i) Eliminate the discriminatory provisions that persist in the pensions system as a result of the use of gender-differentiated life expectancy tables that provide for lower pensions for women;

(j) Adopt a system of quotas in the corporate governance of firms in the public and private sectors;

(k) Adopt the bill currently before Congress which would allow abortion on three grounds, and consider specific exceptions in cases of pregnancy among girls under the age of 16, taking account of the risks to their health;

(l) Create a media monitoring institution with the power to impose sanctions in the case of discriminatory content and to train journalists in mainstreaming of gender and human rights perspectives, with a view to ensuring that the media respect gender equality;

(m) Amend existing legislation on violence against women with a view to adopting a comprehensive law that addresses all forms of violence in all spheres, both public and private.

83. **With regard to the institutional framework, the Working Group recommends that Chile:**

(a) Ensure due access to justice and to effective redress through the courts;

(b) Develop complaint and reporting mechanisms easily accessible to all women throughout the country without discrimination;

(c) Develop a plan for ongoing training on gender and human rights perspectives for officials in the justice, education and health systems and for labour inspectors;

(d) Design and implement a system for effective monitoring by the Labour Inspectorate and increase the number of labour inspectors;

(e) Increase the number of medical specialists in the public sector, in particular for the effective prevention of breast and cervical cancer.

84. **With regard to policies, the Working Group recommends that Chile:**

(a) Implement its ambitious programme of reforms, allocating all the necessary resources;

(b) Implement existing laws by: (i) ensuring better access to justice; (ii) extending free legal aid; (iii) providing gender training for law enforcement and justice officials; (iv) ensuring effective means of implementation including the design of multisectoral and preventive public policies, appropriate regulations, allocation of adequate resources for their implementation and the creation of monitoring systems;

(c) Ensure wide dissemination of legislation regarding gender equality, including the Convention on the Elimination of All Forms of Discrimination against Women, in a format suitable for all stakeholders;

(d) Develop sustainable educational programmes, not limited to specific awareness-raising campaigns, in order to support a profound cultural transformation that empowers women and seeks to create a culture of equal treatment for men and women;

(e) Promote shared responsibilities between women and men, in both the public and private spheres, facilitating the integration of women into the labour market, particularly by promoting more active participation by men in unpaid domestic activities;

(f) Facilitate the registration of associations of women producers as cooperatives with access to credit;

(g) Adopt a programme for basic education on the right of women to equality, the equal responsibility of men and women in the upbringing of children, the prohibition of all forms of violence against women, sex education and, in particular, the risks associated with teenage pregnancy;

(h) Implement policies and cross-cutting programmes to address the multiple discrimination affecting groups of women in situations of vulnerability;

(i) Introduce effective, relevant, replicable and periodic measurement and assessment mechanisms in order to produce reliable statistical data on groups of women facing multiple discrimination with regard to access to health, education, work, housing, justice, family and the exercise of all their rights;

(j) Ensure access to health services — including prevention, treatment and rehabilitation throughout the life course — for all women, but particularly those in a precarious socioeconomic situation;

(k) Ensure free access to all contraceptives in accordance with the law;

(l) Develop a strategy to prevent teenage pregnancies, integrating mandatory sex education into all schools from the primary level.